

(2020) 02 PAT CK 0340

In the Patna High Court

Case No : Letters Patent Appeal No. 1146 Of 2017, 776, 777 Of 2019, Civil Writ Jurisdiction Case No. 396 Of 2013, 657 Of 2017, Civil Review No. 393 Of 2013

Raj Kishore Gupta And Anr

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 26-02-2020

Acts Referred:

Industrial Disputes Act, 1947 — Section 25(o)
Code Of Criminal Procedure, 1973 — Section 141

Citation : (2020) 02 PAT CK 0340

Hon'ble Judges : Shivaji Pandey, J;Anjani Kumar Sharan, J

Bench : Division Bench

Advocate : Syed Arshad Alam, Anjum Perveen, Syed Asfar Alam, S.S. Sundaram, Mankeshwar Tiwari, Sanjay Kumar Ghosarvay

Final Decision : Dismissed

Judgement

As the common issue is involved in all these appeals, hence, with consent of parties, they have been heard together and are being disposed of by this common judgment.

At the out set, it is made clear that we will confine with the fact arising from C.W.J.C. No.396 of 2013. As it appears that on the earlier occasion, the appellants had prayed for the following relief:

- i) That an appropriate writ may be issued commanding upon the respondent no.2 and 3 to declare the result of the petitioners and other of the examination conducted by the State Selection Commission for the post of Enforcement Sub Inspector held on 26.02.2012.
- ii) That an appropriate writ may be issued commanding upon the respondent no.2 and 3 to declare the cut off marks of the last candidate whose result have already declared.

iii) That an appropriate writ may be issued upon respondent no.2 and 3 to produce the Answer books of the candidates appeared at the examination for the post of enforcement Sub Inspector held on 26.08.2012.

iv) That after verification of the answer books of the candidates if any illegality/irregularity is found in the answer books the fresh exam in the matter may be conducted after cancelling the examination.

v) Any other relief/reliefs for which the petitioner are found entitled to. From the order passed in the writ application, it appears that for relief no.1, it has been stated that the result was published but the appellants could not find their places in the recommendation. So far as the relief no. (ii) is concerned, cut off marks was available to the appellants. So far as relief nos. (iii) and (iv) are concerned, copies of the OMR sheets had been produced after serving copies thereof upon the petitioners which shows that marking had been done in all the questions which had been attempted by the appellants.

Certain facts are undisputed that after completion of the competitive examination, the model answer was uploaded on the website of the Staff Selection Commission (hereinafter for the sake brevity 'Commission') seeking objection from the candidates. On receipt of the objection, a committee was constituted to scrutinize the objection and after resolution of the objection, the final result was published.

Learned counsel for the appellants has tried to persuade us to take the view that though they had given proper answer but, they have not been granted marks and in that context he has shown the different sets of model answers and the choice given by the appellants and tried to impress us that, in the case of multiple choice examination, the position of the question with respect to all candidates would remain same. It does not change its place with respect to different sets of question and tried to impress us that they had been deprived of proper marks.

Per contra, learned counsel for the Commission submits that when OMR sheets were given to these appellants and they had preferred not to press the writ application and where after they filed the review application and that too had been rejected by this Court.

So far as the submission of learned counsel for the appellants that position of all the questions remained the same is misconceived and misdirected. Position of all the questions in all the sets does not remain the same as it always changes its places. Therefore, on the facts and on the law, the second writ application does not survive on the score that once they have tried their luck in earlier writ application and also in review application and both had been dismissed without going into their merits, now they cannot take a fresh chance by filing a second L.P.A. for the same cause of action.

Having considered the rival contentions of the parties, it appears that the learned

Single Judge, while disposing of the second writ application filed by the appellants bearing C.W.J.C. No.657 of 2017 has specifically held the second writ petition is not maintainable. We find force on the view taken, as certified by the judgment in the case of Sarguja Transport Service Vs. State Transport Appellate Tribunal reported in AIR 1987 Supreme Court 88. Though learned counsel for the appellants have placed reliance on the judgment in the case of Sarva Shramik Sanghatana (KV), Mumbari Vs. State of Maharashtra and others reported in (2008) 1 Supreme Court Cases 494 wherein their Lordships have dealt with the situation arising out under Section 25 (o) of the Industrial Disputes Act dealing with closure of the industry, in that background the Court has considered that the principle laid down in the case of Sarguja Transport Service (supra) does not apply.

In the present case, the appellants had litigated the case on facts and after discussion when the order was going to be passed against them, they preferred to withdraw the same. Learned counsel for the appellants further placed reliance on the judgment in the case of Puran Singh and others Vs. State of Punjab and others reported in AIR 1996 Supreme Court 1092, paragraph-5 of the said judgment has dealt with non-applicability of Civil Procedure Code in the writ proceedings looking to Section 141 Cr.P.C. has been dealt with but certain principles does apply as has been enunciated in the judgment of Daryao and others Vs. State of U.P. and others reported in AIR 1961 Supreme Court 1457.

Having considered the technical aspect of the matter as well as the merits of the case, we do not find any merit in these appeals as the procedure which was required to be followed before publishing the result, the Commission has deliberated. The Court does not have any expertise to examine the correctness of answer, which has been gone into by experts, as the experts has examined the model answer and corrected the same.

Accordingly, these appeals are dismissed and the order of the learned Single Judge is hereby confirmed.

However, if the appellants apply in any vacancy in future, they will be at liberty to participate in the examination subject to fulfilling conditions mentioned in the advertisement.